

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

THE UNITED STATES OF AMERICA, THE REPUBLIC OF CHINA, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE UNION OF THE SOVIET SOCIALIST REPUBLICS, THE COMMONWEALTH OF AUSTRALIA, CANADA, THE REPUBLIC OF FRANCE, THE KINGDOM OF THE NETHERLANDS, NEW ZEALAND, INDIA, AND THE COMMONWEALTH OF THE PHILIPPINES.

-AGAINST-

ARAKI, Sadao; POIHARA, Kenji; HASHIMOTO, Kingoro; HATA, Shunroku; HIRANUMA, Kiichiro; HIROTA, Koki; HOSHINO, Naoki; ITAGAKI, Seishuro; KAYA, Okinori; KIDO, Koichi; KIMURA, Heitaro; KOISO, Kuniaki; MATSUI, Iwane; MATSUOKA, Yosuke; MINAMI, Jiro; MUTO, Akira; NAGANO, Osami; OKA, Takasumi; OKAWA, Shumei; OSHIMA, Hiroshi; SATO, Kenryo; SHIGEMITSU, Maroru; SHIMADA, Shigetaro; SHIRATORI, Toshio; SUZUKI, Teiichi; TOGO, Shigenori; TOJO, Hideki; UMEZU, Yoshijiro. Defendants.

COUNTY OF SUFFOLK)
STATE OF NEW YORK) ss
UNITED STATES OF AMERICA.)

I, HENRY L. STIMSON, being duly sworn, on oath depose and say:

I was Secretary of State of the United States of America from March 5, 1929, to March 4, 1933. Prior to that time, in 1928, I was appointed Governor-General of the Philippine Islands, which office I held until I was named Secretary of State.

On the basis of my personal observation and contacts, as well as on the information coming to me in the course of my official duties, I verily believe the following statements to be true:

When I took office as Secretary of State, Japan, together with the United States and various other nations, was a party to the following treaties, pacts, and agreements, and others, or had subscribed to the principles therein announced:

- (1) The Convention for the Pacific Settlement of International Disputes, signed at the Hague 29 July 1899;
- (2) The Convention for the Pacific Settlement of International Disputes, signed at the Hague 18 October 1907;
- (3) The Hague Convention No. III relative to the Opening of Hostilities signed 18 October 1907;
- (4) Agreement effected by exchange of notes between the United States and Japan, signed 30 November 1908, declaring their policy in the Far East;

- (5) Treaty between the British Commonwealth of Nations, France, Japan, and the United States relating to their Insular possessions and Insular Dominions in the Pacific Ocean, 13 December 1921;
- (6) The Treaty between the United States of America, the British Commonwealth of Nations, Belgium, China, France, Italy, Japan, the Netherlands, and Portugal, concluded and signed at Washington 6 February 1922, known as the Nine-Power Treaty;
- (7) The Treaty concluded and signed at Paris 27 August 1928, known as the Kellogg-Briand Pact and as the Pact of Paris;
- (8) Convention respecting the Rights and Duties of Neutral Powers and Persons in War on land, signed at the Hague 18 October 1907.

As a party to the above-listed treaties, pacts, and agreements, and others, or as a subscriber to the principles therein announced, Japan had agreed, inter alia:

to use its best efforts to insure the Pacific settlement of international differences; in case of serious disagreement or conflict, before an appeal to arms, to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers; not to commence hostilities without previous and explicit warning; to maintain the existing status quo in the region of the Pacific Ocean and to defend the principle of equal opportunity for commerce and industry in China and to support the independence and integrity of China; in event of controversy in any Pacific questions to invite other Parties to a joint Conference; to respect the sovereignty, independence, and the territorial administrative integrity of China; to use its influence to effectually establish and maintain the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China; to refrain from seeking special or monopolistic privileges in China detrimental to the rights or interests of other foreign powers or their nationals; to condemn recourse to war for the solution of international controversies and to renounce war as an instrument of national policy; not to move troops or convoys across the territory of a neutral Power.

In 1931 Manchuria was actually and legally part of China. Japan claimed some exceptional rights in Manchuria, and many of these rights, while always asserted with emphasis, were not attested by documentary evidence which was unchallenged. Some of the treaties upon which Japanese claims rested were asserted by China to be either unauthentic or to have been executed under duress. Under cover of these treaties, however, Japan exercised powers of the administration and police throughout a zone which bordered the South Manchuria Railway, based upon the armed forces she was permitted to maintain. These areas included towns and portions of cities like Mukden and Changchun.

While there was no cleavage in Japanese feelings as to the existence and importance of special interests in Manchuria, there was a very fundamental difference in political thought in Japan as to the method by which that interest should be supported and enforced. This difference in general corresponded with the alignment between those leaders who were following the ideals of popular government on the one hand, and the conservative and military leaders on the other. The policy of the latter group rested ultimately upon military force, and assumed that Japan's rights were political and sovereign.

On the night of September 18, 1931, armed hostilities broke out in Manchuria, and Japanese forces occupied not only the city of Mukden, but other cities in South Manchuria. The incident which was claimed by the Japanese to have caused their action, namely an alleged act of sabotage by the Chinese on the South Manchurian Railway, diminished to such small proportions as strongly to suggest its actual non-existence. Meanwhile the Japanese army was found to have acted with such promptness as to make it evident that they were moving under a previously arranged strategic plan. By the afternoon of September 19, 1931, cities like Antung, Changchun, and Newchwang, several hundred miles from one another, had been occupied by the Japanese forces, who at once assumed the place of the civil authorities in those cities. Within forty-eight hours the whole of southern Manchuria, not only along the Japanese South Manchuria Railway, but also along some of the railroads built by the Chinese had thus been effectively occupied. The evidence pointed to a deliberate action planned and authorized by the highest Japanese authorities in Manchuria and possibly with direction from the high military command in Tokyo.

On September 25, 1931, the Japanese Ambassador in Washington left with the Under Secretary of State a Statement issued after an extraordinary meeting of the Japanese Cabinet on September 24, 1931. This Statement contained an assurance that while on September 21 a detachment was despatched from Changchun to Kirin it was not with a view to military occupation but only for the purpose of removing the menace to the South Manchuria Railway on flank, and that as soon as that object had been attained it would be withdrawn. The Statement contained a firm assurance that the Japanese Government harbored no territorial designs in Manchuria. As early as October 8, following this firm assurance on the part of Japan, I was informed by the American Charge in Tokyo that the Japanese General Staff had issued an information bulletin to foreign military attaches stating that Japan found it impossible to withdraw the Japanese Army to their original stations or even to the contiguous territory.

After the capture of Mukden by the Japanese on September 19, 1931, the headquarters of the Chinese Government and forces had been removed to Chinchow. Soon after September 30, General Honjo, the Japanese Commander-in-Chief in Manchuria, publicly announced that the Government of Marshal Hsueh-liang would no longer receive Japanese recognition. Other statements followed to the effect that Japanese forces would not cease their activities until Marshal Chang and his government were driven entirely out of Manchuria. Not only were these statements left without

reprimand from the Tokyo government, but Japanese military planes began to enforce this policy in a most drastic manner. On October 8, 1931, a squadron of eleven Japanese planes dropped thirty or forty bombs upon the unarmed and unwarned city of Chinchow, killing and wounding a number of the inhabitants. On its face this was an indefensible act of aggression. In the latter part of October, the Japanese high command in Manchuria sent a military expedition to Tsitsihar in northern Manchuria. This was several hundred miles north of any portion of the South Manchuria Railway and far outside the zone of any of the treaty rights which Japan claimed. This expedition defeated and destroyed the forces of Chinese General Ma Chan-shan and thus destroyed all the organized forces of Marshal Chang in North Manchuria.

The capture of Tsitsihar left the Chinchow District as the only fragment of Manchuria in which Marshal Chang's authority remained intact, and towards the latter part of November the Japanese forces began to move towards Chinchow. On behalf of the United States I made vigorous representations through diplomatic channels, and the Japanese forces were withdrawn to Mukden on November 28, 1931. On November 24, 1931, the Japanese Foreign Minister stated to the American Ambassador that "the Premier, the Secretary of War, the Chief of Staff and he are agreed that towards Chinchow there shall be no hostile operations and orders have been issued to that effect". After December 11, 1931, however, the movement towards Chinchow was resumed and that city was seized by the Japanese army on January 3, 1932. This completed the destruction of the organized forces of Marshal Chang and left the control of all Manchuria in the hands of the Japanese.

On October 26, 1931, the Japanese Government made public fundamental points upon which normal relations between China and Japan should be based, and it appeared then that they included the settlement of the entire question of the disputed treaty rights of Japan in Manchuria. While Japanese representatives disclaimed her intention to use military force to achieve her national objectives, it seemed clear that she was bent on doing just that very thing. Her army was not withdrawing; it was actually pushing forward and the Japanese government was declining to interfere until all these fundamental questions of national policy between the two nations should be settled.

On December 22, 1931, I received from the American Ambassador in Tokyo a telegram in which the Ambassador stated that the Prime Minister of Japan had called at the American Embassy and assured him that Japan would never allow a situation to arise in Manchuria which would be fraught with the danger of war, and that Chinese sovereignty would never be impaired. The Prime Minister reiterated that Japan merely desired the protection of Japanese persons and interests. In the same telegram the American Ambassador reported that active preparations were continuing for further operations in Manchuria where a free hand seemed to have been given to the military.

On December 22, 1931, I requested the American Ambassador in Japan to inform the Foreign Minister of my apprehension of Japanese forces taking action against Chinese regulars south of Chinchow. I requested the Ambassador to inform the Foreign Minister that a new

attack by Japanese forces on Chinese regulars would be regarded as unwarranted and would be interpreted as indicative of indifference to obligations assumed in various treaties to which Japan and China, as well as the United States, were parties. On December 27, 1931, I received a memorandum from the American Ambassador which had been delivered to him by the Vice Minister of Foreign Affairs in which it was stated that the Imperial Government was determined to remain loyal to the League of Nations Covenant, the No War Treaty, other various treaties and the two resolutions adopted by the Council of the League of Nations regarding the Manchurian situation. On December 29, 1931, the American Minister in China informed me that Marshal Chang Hsueh-liang ordered withdrawal of all Chinese forces from Manchuria, stating that he was motivated by a desire to deprive Japanese of any excuse for further aggression in North China.

On January 7, 1932, I sent a note to Japan and China informing them that the United States could not admit the legality of any situation de facto and did not intend to recognize any treaty entered into between those Governments which might impair the treaty rights of the United States or its citizens in China, including those which relate to the sovereignty, the independence, or the territorial and administrative integrity of China, or to the international policy relative to China, commonly known as the open door policy, and that the United States did not intend to recognize any situation, treaty or agreement which might be brought about by means contrary to the obligations of the Pact of Paris of August 27, 1928. On January 16, 1932, the Japanese government replied to our note of January 7. The argument made in that note was to the effect that China was in an "unsettled and distracted state" and that this fact relieved Japan from the obligation to carry out the covenants of the Nine Power Treaty and the League of Nations Covenant, which may be fairly said to have become the argument upon which Japan thereafter relied with the greatest assurance, but which was rejected as untrue and unsound by the unanimous report of the Lytton Commission.

In the middle of January, 1932, Japan's aggression in Manchuria seemed to have achieved success. By May 1, 1932, Japan had attempted to extend her aggressive action to the Yangtze River and to break up the efforts of the Chinese at Shanghai to maintain an economic boycott against her business. There Japan received a military set-back in being checked by Chinese soldiers. In the hostilities around Shanghai, on January 28, 1932, the Japanese forces bombed the unwarned and helpless civilian native quarter of Chapei. This was an act of inexcusable cruelty. Not only were bombs dropped upon positions held by Chinese troops, but incendiary bombs were used which soon had the entire quarter in flames. Thereafter, the Japanese barricaded the streets in the International Settlement of Shanghai, disarmed the police, and paralyzed all regular municipal functions. Numerous excesses against the Chinese population were committed, including many summary executions, and a veritable reign of terror resulted. The Japanese troops even invaded the American sector of defense at Shanghai where they committed acts of violence against Chinese. On February 24, 1932, I sent to Senator Borah, Chairman of the Committee on Foreign Relations of the Senate, a letter in which was outlined the position and policy of the American Government with respect to the situation in China in relation to the application of treaties.

Almost immediately after its army had overthrown the Chinese Government of Manchuria, Japan commenced to establish political and economic control over that country. This was done by forcible creation of an ostensibly independent but really puppet state controlled by Japan and known as Manchukuo. Thereafter, as soon as other nations had announced their intention not to recognize as valid any fruits of this conquest, the Japanese government proceeded to take further steps designed to make this policy of the rest of the world as difficult and ineffective as possible.

On April 4, 1932, the Japanese Ambassador in Washington called upon me and in the course of discussion, admitted that promises made by Japan had been broken but said that chauvinist conditions were so acute in Japan that the Government could not take any other position. On June 23, 1932, I received a telegram from Ambassador Grew in Tokyo that the press had cabled to America a statement by General Araki, Minister of War, before the Supreme Military Council to the effect that the resolutions of the League of Nations and statements made by Japan in regard to Manchuria before the establishment of Manchukuo could no longer be considered as binding on Japan.

On January 5, 1933, the Japanese Ambassador in Washington called upon me and stated that in any event Japan had no territorial ambition south of the Great Wall. He stated that his information as to the affair in Shantung was that it was a local incident, provoked by a minor outbreak of Chinese against Japanese there. On February 23, 1933, the Japanese Ambassador came to tell me on the instruction of his Government that the State of Manchukuo was determined to suppress irregular forces in the Province of Jehol, and that under the treaty between Manchukuo and Japan, Japan was obliged to support Manchukuo and therefore the Japanese forces were co-operating in this movement in Jehol. On February 27, 1933, I reminded the Japanese Ambassador that when the Manchurian outbreak occurred in September 1931, I had not attributed it to the Government of Japan or to the statesmen whom I used to know or to the people of Japan but to the efforts of a small group of persons of militaristic ambitions and desires. The Ambassador said that he knew this very well. I pointed out the importance of the treaties as instruments to preserve peace and the Ambassador said that he recognized this. He also said that on his part although he had been disappointed many times when he had given me assurances which were afterwards not carried out in Manchuria he still believed in his people and that sooner or later the moderate elements would not disappoint us. I told him at that time that I joined in his hope that this would be so.

I retired as Secretary of State on March 4, 1933 and was succeeded by the Honorable Cordell Hull who then assumed the burden of office in connection with Japanese-American relations.

(SEAL)

/s/ Henry L. Stimson
HENRY L. STIMSON

Subscribed to and sworn to before me
this 7 day of June, 1946.

/s/ Clifton F. Gardner
Notary Public in and for the County of Suffolk
State of New York. Commission expires March 30, 1947.
PURL: <http://www.legal-tools.org/doc/24011a/>

STATE OF NEW YORK)
) ss:
County of Suffolk)

Form No. 115

I, R. FORD HUGHES, Clerk of the County of Suffolk, and also Clerk of the Supreme Court for said County, the same being a Court of Record, DO HEREBY CERTIFY that

Clifton F. Gardner

whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such deposition or proof or acknowledgment a NOTARY PUBLIC in and for such County, duly commissioned and sworn, and authorized by the laws of said State to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds of conveyances for land, tenements or hereditaments in said State of New York. And further that I am well acquainted with the handwriting of such NOTARY PUBLIC and verily believe that the signature of said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the said Court and County the 11 day of June 1946.

(SEAL)

/s/ R. Ford Hughes

Clerk.

The signature of the notary public, Clifton F. Gardner, we have caused by these presents to be exemplified and the seal of our said Court for said County to be hereunto affixed.

Witness, Hon. Thomas J. Cuff, Justice of our Supreme Court, in and for the Second Judicial Department of said State, this 11th day of June 1946, and in the 170th year of the Independence of the United States.

(SEAL)

/s/ R. Ford Hughes Clerk

I, Hon. Thomas J. Cuff, Justice of the Supreme Court of the State of New York, in and for the Second Judicial Department thereof, Do hereby certify, that R. Ford Hughes, whose name is subscribed to the preceding exemplification, is the Clerk of the County of Suffolk and Clerk of the Supreme Court, in and for said County, duly elected and sworn, and that full faith and credit are due to his official acts.

I FURTHER CERTIFY, that the Seal affixed to said exemplification is the proper Seal of said Court for said County, and that the attestation thereof is in due form of law and by the proper officer.

Witness my hand at the City of Brooklyn, this 11th day of June in the year 1946.

/s/ Thomas J. Cuff
Justice of the Supreme Court of the State of New York, in and for the Second Judicial Department.

STATE OF NEW YORK,) ss:
County of Suffolk,)

I, R. Ford Hughes, Clerk of the County of Suffolk,
and Clerk of the Supreme Court of the State
of New York, in and for said county, Do Hereby
Certify that

Hon. Thomas J. Cuff

(SEAL)

Whose name is subscribed to the preceding
certificate is Presiding Justice of the
Supreme Court of said State in and for the
second Judicial District, duly elected and
sworn, and that the signature of said Justice
to said certificate is genuine.

IN TESTIMONY WHEREOF I have hereunto set
my hand and affixed the Seal of said county
and Court, this 11th day of June 1946.

/s/ R. Ford Hughes Clerk.